IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 478 of 2002
with
Civil Application No.8642 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANTIBHAI NARANBHAI PATEL

Versus

COLLECTOR

Appearance:
MR MC SHAH for appellants / Petitioner Nos. 1-2
Mr.M.K.Patel, Assistant GOVERNMENT PLEADER,
for Respondent No. 1-2
RULE SERVED for Respondent No. 3
MR BS PATEL for Respondent No. 4
MRS RANJAN B PATEL for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/03/2003

ORAL JUDGEMENT

The appellants are the original plaintiffs of Special Civil Suit No.242 of 2001, which is pending in the Court of Civil Judge (Senior Division), at Mehsana. The case of the plaintiffs is that they are the purchasers of the disputed land from the original owner and that their names also appear in the revenue record in the column of 'cultivator' and also they are in physical possession of the disputed land. On that basis, the present suit is filed for a declaration and injunction and it is prayed that the Government may not hand over the entire compensation to the original owner alone and part of the amount is required to be paid to the plaintiffs, as they are the purchasers of the disputed land and their names also appear in the revenue record in the cultivator's column. During the pendency of the said suit, Application Exhibit 5 was submitted, with a prayer that the Collector be restrained from handing over the entire amount of compensation to the defendant No.4 of the suit. However, the trial court has rejected the said prayer for interim injunction. The trial court also observed in paragraph 10 of the order that the present appellant can file necessary proceedings under the Land Acquisition Act. On these and such other grounds, the application for interim injunction is rejected, against which the present Appeal from Order is filed.

At the time of hearing of this Appeal from Order, Mr.Patel, learned Assistant Government Pleader, pointed out that, the Award is not yet declared and affidavit-in-reply is also filed by the respondent. In that view of the matter, even the suit itself is premature. In view of this development, now, nothing further is required to be done in the Appeal from Order, because, there is no question of granting injunction, especially when the Award itself is not declared by the competent authority. Realising this situation, Mr.Shah for the appellants states that he would like to withdraw this Appeal from Order. He also submitted that even the pending suit also will be withdrawn.

It is, however, requested that the Collector may be directed to at least hear the present appellants before declaring the Award by issuing notice under the provisions of the Land Acquisition Act.

Considering the facts and circumstances of the case, in my view, the suit itself is premature since the

Award is not declared and on that basis, the Appeal from Order is also premature. Under the circumstances, the appellants are permitted to withdraw this Appeal from Order. The appellants also may submit necessary Pursis in the trial court for withdrawing the suit itself on the ground that the same is at a premature stage. In the facts and circumstances of the case, however, it is directed that the Collector shall give hearing to the present appellants before declaring the Award. Before declaring the Award, whatever may be the objections of the appellants, the same may be taken into account by the Collector in accordance with law. It is clarified that this Court has not expressed any opinion as to whether the appellants are entitled to any compensation and it is for the Collector to decide the same in accordance with law and as per the evidence on record as well as considering the provisions of law.

It is clarified that this court has not expressed any opinion on the merits of the controversy especially when the defendants are disputing the transaction in question.

Subject to what is stated above, this Appeal is disposed of as withdrawn.

In view of the above order passed in the Appeal from Order, the Civil Application is also disposed of. Rule is discharged. Interim relief is vacated with no order as to costs.

Writ to be sent forthwith to the Collector, Mehsana.

10th March, 2003 (P.B. Majmudar, J.)

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(apj)